Editor's note: Reconsideration denied by order dated April 18, 1988; Appealed -- reversed, sub nom., Charles Hertz v. Interior, Civ.No. 82-1560 (D.D.C. Mar. 11, 1986)

JACK M. MOSELY
CHARLES S. HERTZ

IBLA 82-293 Decided March 10, 1982

Appeal from decision of the Colorado State Office, Bureau of Land Management, canceling oil and gas leases, C-30482 and C-30483.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents
An oil and gas lease application, form 3112-1 (June 1980), is not properly completed in accordance with regulation 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f), dealing with parties in interest other than those elsewhere disclosed, assignments violative of 43 CFR 3112.4-3, and multiple filing violative of 43 CFR 3112.6-1, are left unanswered.

APPEARANCES: Bruce A. Budner, Esq., and Joel Held, Esq., Dallas, Texas, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Jack M. Mosely and Charles S. Hertz have appealed the decision of the Colorado State Office, Bureau of Land Management (BLM), dated December 3, 1981, canceling their respective oil and gas leases, C-30482 and C-30483. Each appellant submitted a simultaneous oil and gas lease application for the August 1980 drawing and received first priority for a designated parcel. Thereafter, BLM issued oil and gas lease C-30482 to appellant Mosely effective June 1, 1981, and oil and gas lease C-30483 to appellant Hertz effective August 1, 1981. BLM canceled the leases because each applicant had failed to answer questions (d) through (f) on his application and thus, each had failed to complete the application as required by 43 CFR 3112.2-1.

Appellants' applications were executed, signed, and submitted on behalf of each by an officer of the Federal Energy Corporation (FEC), a filing service for simultaneous oil and gas lease applications. Examination of appellants' applications reveals that questions (d) through (f) on the reverse side of each card were not answered.

The applicable regulation at 43 CFR 3112.2 and CFR 3112.2-1, states in part:

> § 3112.2 How to file an application.
>
> § 3112.2-1 Simultaneous oil and gas lease applications.
>
> (a) An application to lease under this subpart consists of a simultaneous oil and gas lease application on a form approved by the Director, Bureau of Land Management, completed, signed and filed pursuant to the regulations in this subpart. [Emphasis added.]

The application form clearly contemplated that items (d) through (f) would be checked on the application itself. Indeed, the introductory words to items (a) through (g) are as follows: "UNDERSIGNED CERTIFIES AS FOLLOWS (check appropriate boxes)." (Italics in original.) Small boxes appear following each item to be checked in response. Although the application does contemplate that the names of other parties in interest or amendments to one's previously filed statement of qualifications may be submitted by attachment, the questions posed by items (d) through (f) are distinct issues.

Questions (d) through (f) are included in a list of questions on the application dealing with the applicant's qualifications to hold a lease and deal particularly with the circumstances of the execution of the application. The questions relate directly to the qualifications of the applicant to receive a lease. The failure to disclose a party in interest to the lease application (question (d)) is a violation of the regulation at 43 CFR 3102.2-7, the assignment of an interest in the lease offer (question (e)) prior to lease issuance or lapse of 60 days after determination of priority is a violation of 43 CFR 3112.4-3, and any interest of the applicant in more than one application for the same parcel (question (f)) disqualifies the applicant under 43 CFR 3112.6-1(c).

Appellants contend that it is not essential that questions (d) through (f) be answered directly on the application itself. Each asserts that BLM acted arbitrarily, capriciously, and in abuse of its discretion by refusing to accept as valid his responses to the questions, which FEC allegedly submitted on an attachment to his application. Copies of the attachments submitted with the brief on appeal contain a statement that FEC is authorized to sign applications for appellant, followed by statements and questions that are substantially similar to those on the application. Each appellant answered "no" to each of questions (d) through (f), and then signed and dated the attachment. Thus, their answers seemingly would have qualified them to hold a Federal lease of this sort had they been entered on the application itself.

We note, however, that although appellants assert that their statements were filed with each application, such statement is not found in either case file where it should be located if filed with the application. See H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981). We further note that the information required under items (d), (e), and (f) is part of the certification of

qualifications required of all applicants for oil and gas leases. This certification must be made on all applications for lease and can neither be provided by attachment nor incorporated by reference. See Clyde K. Kobbeman, 58 IBLA 268, 88 I.D. 915 (1981). The rationale for requiring a separate certification for each lease application is demonstrated by the statements attached to the briefs on appeal in these cases. The statement of appellant Mosely is dated July 7, 1980, and the statement of appellant Hertz is dated July 5, 1980. It is clear that neither was contemporaneous with the appropriate application at issue. A distinction must be drawn between the certification as to qualifications, including items (d), (e), and (f), which is made by signing the lease application, and supplemental evidence required to establish the qualifications of applicant (e.g., statement of corporate qualifications, copy of agency agreement) which may be incorporated by reference under 43 CFR 3102.2-1(c). See Clyde K. Kobbeman, supra.

[1] Appellants' arguments on appeal directed to their failure to complete the application are substantially the same as those presented by various other appellants on appeal to this Board recently. We hereby incorporate by reference our discussion of those arguments and reaffirm our conclusions reached in their cases. William J. McGarth, 62 IBLA 110 (1982); Robert D. Alexander, 59 IBLA 118 (1981); Clyde K. Kobbeman, supra; Vincent D'Amico, 55 IBLA 116 (1981). A simultaneous oil and gas lease application is not properly completed in accordance with 43 CFR 3112.2-1 and the instructions on the application itself where questions (d) through (f) are left unanswered. Id.

In this appeal, appellants urge, as well, that the Board apply to their benefit an equitable policy against cancellation of leases for regulatory violations which is set forth in John T. Stewart, 25 IBLA 306 (1976). In that case we stated:

> The Department has developed a policy in some circumstances of not canceling oil and gas leases issued in violation of regulatory requirements, in the absence of intervening qualified applicants. This policy has been applied to leases which do not comply with the limitations on total area and minimum acreage now set out at 43 CFR 3110.1-3(a). However, when a qualified applicant files a lease offer for the same land prior to the issuance of the defective lease, the Department will cancel the lease when it discovers the error. [Citations omitted.]

25 IBLA at 308-09. This principle cannot be properly extended to the leases herein. The violations at issue involve more than a purely regulatory requirement. Here the omissions of appellants go to the question of their qualification to hold a lease. Under the statute, 30 U.S.C. § 226(c) (1976), the Department must issue an oil and gas lease to the first qualified applicant. Under the simultaneous filing system all applications are considered received as of the same time. Therefore where the first-drawn application does not reflect a qualified applicant, the applicant with the next priority who has filed a complete application becomes the first qualified applicant. See Herman Birnbaum, 58 IBLA 279 (1981).

Finally, appellants argue that their leases should not be canceled because they have been assigned to bona fide purchasers. On appeal, appellant Mosely has submitted a copy of a document dated December 6, 1980, which assigns all his right, title, and interest in his simultaneous oil and gas lease application and any subsequently issued lease to Snyder Oil Company. He retains an overriding royalty interest. Appellant Hertz has presented a copy of an agreement with Terra Resources, Inc., initially dated November 5, 1980, to assign the lease resulting from his application 53 weeks after the date of lease issuance.

There is no indication in the case file for Mosely's lease that BLM approval of the assignment to Snyder Oil Company has ever been requested as required by 43 CFR Subpart 3106. The assignor of a lease remains the lessee of record obligated to the Federal Government until BLM approves the assignment. 30 U.S.C. § 184(a) (1976); Otis Energy Inc., 52 IBLA 316 (1981). Therefore, insofar as both leases are concerned, BLM considers appellants to hold all right, title, and interest in their respective leases and properly cancels the leases with respect to them. We need not address in this appeal whether Snyder Oil Company and Terra Resources, Inc., are bona fide purchasers as they have not appeared as parties to this appeal, and the resolution of that question has no bearing on the outcome of appellants' appeal. Any interest retained by a lessee after assignment of a lease to a bona fide purchaser is voidable and properly canceled where it is revealed that the lessee's original lease offer is defective. Home Petroleum, Inc., 54 IBLA 194, 88 I.D. 479 (1981) aff'd sub nom. Geosearch, Inc., v. Watt, No. C 81-208K (D. Wyo. Jan. 1, 1982). Thus, even assuming Snyder Oil Company and Terra Resources, Inc., were to protest cancellation of the leases and establish their status as bona fide purchasers, any interests retained by appellants would be subject to cancellation.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge